UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

SUMMIT SERVICES GROUP
Employer

and

HCR MANOR CARE, D/B/A
HEARTLAND OF PERRYSBURG
Employer

Case Nos. 8-RC-16699
8-RC-16700

and

SEIU DISTRICT 1199 OH/WV/KY
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in these proceedings to the undersigned.[1]

In Case No. 8-RC-16699, the following employees of the Summit Services Group, Inc., (Summit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> *All full-time and regular part-time housekeepers and laundry aide employees employed by Summit Services Group, Inc. working at the Heartland of Perrysburg facility located in Perrysburg, Ohio, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.*

The record indicates there are approximately 11 employees in the unit found appropriate herein.

[1] The Petitioner and Heartland filed post-hearing briefs that have been duly considered. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employers, Heartland and Summit, are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employers. A question affecting commerce exists concerning the representation of certain employees of Summit and Heartland within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

In Case No. 8-RC-16700, the following employees of the HRC Manor Care, d/b/a Heartland of Perrysburg, (Heartland) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> *All full-time and regular part-time certified nursing assistants, dietary assistants and cooks employed by HRC Manor Care, d/b/a Heartland of Perrysburg, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.*

The record indicates there are approximately 70 employees in the unit found appropriate.

I. Issues

In Case No. 8-RC-16699, the Petitioner seeks a bargaining unit of housekeeping and laundry employees working at the Heartland of Perrysburg facility and the further finding that both Heartland and Summit jointly employ these individuals. Heartland argues that it is not an employer of these individuals, although Summit took the position at hearing that the two entities are joint employers. Further, in Case No. 8-RC-16700, the Petitioner seeks a unit limited to Heartland's certified nursing assistants, dietary assistants, and cooks. Heartland argues that the only appropriate unit must include the scheduling coordinator, general clerk, medical records director, central supply clerk and general clerk/receptionist.

II. Decision Summary

In Case No. 8-RC-16699, I find the petitioned-for unit to be appropriate. However, I find that Summit and Heartland do not jointly employee these individuals. Instead, these individuals are solely the employees of Summit.

I find that the petitioned-for unit in Case No. 8-RC-16700 is an appropriate one, without the inclusion of the additional positions sought by Heartland.

III. Background

Heartland of Perrysburg operates a nursing home in Perrysburg, Ohio, providing long term, skilled and intermediate care. It maintains three departments within that facility: nursing, recreation and dietary/maintenance.

Historically, the certified nursing assistants, dietary assistants and cooks employed by Heartland have been represented by another labor organization, HERE Local 84.[2] The most recent contract between these parties is to expire by its terms on June 30, 2005.[3] At present, this unit consists of approximately 70 employees.

[2] The relationship between Heartland and HERE Local 84 existed for more than 20 years.

[3] The incumbent union has disclaimed any interest in representing the unit employees following the expiration of the current contract and has also declined to participate in this proceeding or appear on the ballot.

Housekeeping and laundry services at this facility are provided pursuant to a contract between Heartland and Summit Services, a Massachusetts corporation located in Wellesley, Massachusetts. Their contractual relationship has existed for approximately 5 years. Summit has twelve employees working at the Heartland facility. One of these twelve is Chris Stoller, the site supervisor for Summit. A "Letter of Agreement" exists between Summit and Local 84 governing certain terms and conditions of employment of these employees. This letter indicates that Summit initially hired the housekeeping and laundry employees then working for Heartland. It further provides that all wages and benefits provided for in the contract between Heartland and Local 84 will also be provided to Summit's employees as a "pass through" cost to Heartland. Heartland is not a party to this "Letter of Understanding".

IV. Joint Employer Status in Case No. 8-RC-16699

Despite Summit's representative's statement of a lay opinion to the contrary, Heartland denies that it jointly employs the laundry and housekeeping employees. The uncontroverted evidence presented at hearing shows that these employees were hired by Summit[4], are paid by Summit and are supervised by Chris Stoller, the site supervisor employed by Summit. Training of these employees is conducted by Stoller. The personnel policies that govern their employment are dictated by Summit. There is no evidence that Heartland has any role in the direction of their work. There is also no evidence that Heartland has effectively recommended the imposition of discipline on any of these Summit employees.

In **Chesapeake Foods, 287 NLRB 405, 407 (1987),** the Board framed its test for determining joint employer status in this manner:

> ***Whether two separate entities share or codetermine "those matters governing the essential terms and conditions of employment" and to establish such status "there must be a showing that the [alleged joint employer] meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision and direction"***

In the instant matter, no such finding can be made. As noted above, there is no probative evidence that Heartland has any meaningful role in such matters. In fact the evidence is all to the contrary. I find it particularly significant that Summit employs its own on-site supervisor who is responsible for direction and control of its workforce. While perhaps not determinative, the Board has long found this fact to carry great weight in making a finding that no joint employer relationship exits. **International Shipping Association, 297 NLRB 1059, 1067-1068 (1990).**

The Petitioner's arguments to the contrary focus on three claims: (1) that the "contract" between Summit and Local 84 was tied to the Heartland agreement, (2) that Chris Stoller is really nothing more than a Heartland manager because he attends its management meetings and (3) Heartland supervisors can recommend verbal counseling of Summit employees.

[4]Five members of the current Summit workforce were former Heartland employees who were hired pursuant to the agreement of Summit and Heartland that required the former to retain them. However, hiring since then has been conducted solely by Summit.

As for Item 1, the fact that Summit elected to become, in effect, a "me-too" signatory to the Heartland contract does not make Heartland a joint employer. Perhaps I would view the matter differently if there was some evidence that Heartland dictated to Summit that it follow such a course in collective bargaining, but there is no such evidence. **TLI, Inc., 271 NLRB 798, 799 (1984).**

As for Item 2, while Stoller may attend meetings of Heartland managers, there is no evidence that Heartland uses these occasions as opportunities to dictate personnel policies to Summit. In fact, Stoller testified that very little regarding labor relations matters is discussed at these meetings.

As for Item 3, there is no evidence that anyone from Heartland has ever effectively recommended to Stoller that one of his employees be disciplined. At most, Heartland managers may express a concern to Stoller about the actions of one of his employees. But they have not made any specific recommendations regarding what action Stoller should take. It is also very clear that Stoller decides on his own what action, if any, to take about such complaints. Such evidence does not support the Petitioner's arguments regarding joint employer status. **Chesapeake Foods, at 407.**

V. Appropriate Unit of Heartland Employees in Case No. 8-RC-16700

The Petitioner asserts that the petitioned-for unit of Heartland employees, certified nursing assistants, dietary assistants, and cooks, is an appropriate one without the addition of the disputed classifications: scheduling coordinator, general clerk, medical records director, central supply clerk and general clerk/receptionist. In the alternative, it argues these positions should be excluded because the positions are either supervisory, office clerical or managerial. Heartland argues that the classifications in question have a strong community of interest with others in the proposed unit and must be included for the unit to be appropriate.

I agree with the Petitioner that the unit it seeks is an appropriate one. Therefore I direct an election in that unit.[5] First, I note that the Petitioner need only seek an appropriate unit, not the most appropriate one. **Overnite Transportation Co., 322 NLRB 723 (1996).** Second, I note that the Board has been reluctant to disturb bargaining units where there has been a long and harmonious history of collective bargaining. **St. Joseph Hospital, 219 NLRB 892, 893 (1975).** In making unit determinations in nursing homes, the Board has advised that these decisions should not only be guided by traditional community of interest standards but also by considerations arising from the acute care hospital rulemaking process. **Park Manor Care Center, Inc., 305 NLRB 872, 875 (1991).** Taking note of such considerations, including the oft-expressed concern over proliferation of health care units, I note that the Board continues to be reluctant to find an existing unit of longstanding to be inappropriate. **Crittenton Hospital, 328 NLRB 879, 880 (1999).**

In the instant matter, it is clear that the Employer has bargained within the petitioned-for unit for years. I recognize that this bargaining was conducted with another union. However, this does not negate the significance of this bargaining history. **Compact Video Services, Inc, 284 NLRB 117, 120 (1987).** The inescapable fact remains that this Employer has been able to

[5] In light of my decision to exclude these positions based on bargaining history and traditional community of interest considerations, I need not address the Petitioner's claims that there are other factors warranting their exclusion.

bargain in this unit for years without apparent problems caused by the composition of the unit. The record shows that it has never challenged the composition of the unit during contract negotiations. It has presented no evidence to support any argument that future bargaining within this same unit would be problematic.

I recognize that bargaining history is not always considered determinative by the Board in making unit determinations. However, the application of traditional community of interest considerations[6] provides even further evidence that the petitioned-for unit is appropriate. The employees in the job classifications in question are separately supervised, they work in offices and other areas of the facility where other unit employees do not regularly work, they have different health insurance and there is little or no evidence of meaningful, regular interaction and interchange between any of them and others in the unit. Accordingly, I find that while it may not be the most appropriate unit, the unit sought by the Petitioner is an appropriate one, and I direct an election therein.[7]

The parties have stipulated, and I find, that the following individuals are not eligible to vote in the election directed herein[8]:

Sara Louk-Administrator
Diane Hendricks-Assistant Administrator
Russell Acino-Human Resources Director
Sandra Turpening-Business Office Manager
Alison Roller-Admissions Director
Susan Hoover-Social Services Coordinator
Catherine Ruiz-Director of Nursing
Lisa Kennedy-Assistant Director of Nursing
Wendy Zhang-MDS Coordinator
Karrie Failor-Activity Director
Susan Paige-Food Service Director
Andria Milliken-Dietary Supervisor
Brian Burgin-Maintenance Director
Malinda Goode-MDS Nurse
Beth Williams-Dietetic Technician

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as

[6] Degree of functional integration, common supervision, similar skills and functions, interchange and contact among employees, similar working conditions and benefits. **Kalamazoo Paper Box Corp., 136 NLRB 134 (1962).**
[7] My earlier decision in **Manor Care Health Services-Lakeshore, Case No. 8-RC-16632-1**to is distinguishable as there was no history of bargaining in that case to weigh in making the unit determination.
[8] The parties stipulated that Goode and Williams are professional employees and all others named are managerial employees. Based on the record, it appears that these individuals are actually supervisory employees and that counsel simply misspoke when referring to them as managerial.

such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

Those eligible in each unit shall vote whether or not they desire to be represented by SEIU District 1199 OH/WV/KY.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by Summit in Case No. 8-RC-16699 and Heartland in Case No. 8-RC-16700 with the Regional Director within seven (7) days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994)**. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by April 27, 2005.

DATED at Cleveland, Ohio this 13th day of April, 2005.

/s/ Frederick J. Calatrello
Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8